

Docket No.: HEI-015

Application No. 10/577,371 RECEIVED
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SEP 21 2010

REMARKS

In this response, claim 10 has been amended to overcome the rejection under 35 USC § 112. Presumably, the Examiner is looking to have the word "is" inserted before "disposed." This establishes syntactical continuity between "the projecting portion is formed below . . . " and a "resin lump is disposed on. . . ." This amendment is seen as overcoming the issue raised.

Further, the claim language is deemed to make it abundantly clear that the resin lump is disposed on a container external side of the claimed projecting portion and is not part of the cover member.

As to the issue raised in connection with claim 15, it is clear from claim 1, that the container and the cover member are separate elements, otherwise how could the heat sealing structure interconnect the two? What is being claimed in claim 1 is a heat sealing structure that provides a hermetic seal between a container and a cover member. Part of this heat sealing structure is, as set forth in claim 15, found on the cover member. The cover in claim 15 is now positively recited.

The rejection of claims 1 and 5-10 under 35 USC § 102(b) as being anticipated by Kinigakis et al. (Kinigakis), is respectfully traversed.

Kinigakis is such that the inner ply 120 is of a substantially amorphous polyethylene terephthalate and outer ply 220 is of a crystallizable polyethylene terephthalate. Claim 1 calls for the projecting portion to be disposed on an upper surface of a crystallized portion of the opening rim part (c.f. the substantially amorphous ply). This means that the claimed projecting portion must be disposed on the upper surface of ply 120 and cannot be a crowned portion of the ply 120 itself. In

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other words, the structure disclosed in Kinigakis does not anticipate the subject matter of claim 1.

Further, the projecting portion is required to comprise an amorphous portion or a lowly crystallized portion. This is more in keeping with the lower (outer) ply 220.

In connection with claim 8, the heat sealing resin piece is required to "protrude" toward an interior of the container. The term "protrude" is summarized in the on line "OneLook® Dictionary Search" as:

- verb: bulge outward
- verb: extend out or project in space
- verb: swell or protrude outwards

It is submitted that the position that the horizontal portion of inner layer 120 corresponds to the claimed projection portion and the claimed heat sealing resin piece, because it is aligned in a direction that (it allegedly) projects toward an interior (and exterior) of the container. However, the portions of ply 120 relied upon for rejection, do not meet the above definitions.

Further, claim 8 also calls for the heat sealing resin piece to be positioned to be substantially appressed against the upper surface of the opening rim part by a cover member having a sealant layer on an inner face thereof. This requirement cannot be met by the layer 120. That is to say, inasmuch as ply or layer 120 is on top, how is the layer or ply 120 to be pressed against itself?

In claim 1 of the invention, the projecting portion is disposed on the upper surface of the crystallized portion of the opening rim part, and at least a portion of the projecting

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portion comprises the amorphous portion or the lowly crystallized portion.

As shown in Figs. 1 and 2, a flange portion is formed on the upper flat surface on which the projection is formed. Thus, as shown in Fig. 5, when the cover is applied to the opening and is heat sealed, the projection is only crushed by the seal head to form a resin piece, which adheres to the sealant layer.

Since the sealant layer adheres to the resin piece, even if the cover member projects outwardly by the increase of pressure of the container sealed by the cover, as shown in Fig. 7, the resin piece adhered to the cover member rises, so that in order to remove the cover, shearing force for the resin piece is required. Even if the adhering force between the cover member and the resin piece is not so strong, it is difficult to peel off the cover member from the inside of the container. Unless the resin piece is cut, the cover member can not be removed from the inside.

In claim 1, the opening rim part is crystallized to increase the rigidity, and the heat seal portion of the projection has the amorphous portion or lowly crystallized portion to lower the melting temperature. Thus, it is possible to heat seal the cover member at a low temperature. Thus, the cover member can be surely heat sealed. Even if the heat seal is made at the lower temperature, the cover member can not be easily peeled off from the inside of the container, as explained before. Nevertheless, the cover member can be easily removed from the outside of the container.

Claim 8 has the advantage as explained above, and in addition, the heat sealing resin piece and the sealant layer can be stably adhered together.

Claims are not anticipated by Kinigakis et al.

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On the other hand, during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." This broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach (MPEP 2111).

It is respectfully submitted that for at least the reasons advanced above, that the interpretations upon which the anticipation is founded is not consistent with the specification in manner which is interpreted in the manner intended in MPEP 2111.

The anticipation rejection is submitted as being untenable for at least the reasons advanced above. Withdrawal of the same is respectfully requested.

The rejection of claims 2, 4 and 11-16 under 35 USC § 103(a) as being unpatentable over Kinigakis, is respectfully traversed.

In this rejection, the analysis of Kinigakis on which the anticipation rejection is based must be revised (strictly speaking discarded) and an interpretation that would be reached by a reader of ordinary skill in the art (who is completely without a full working knowledge of the claims), applied in its stead. That means the highly strained interpretations of the structure disclosed in Kinigakis cannot be applied and common sense must be used when determining what the Kinigakis reference teaches when taken as a whole.

In a nutshell, it is submitted that the softly crowned portion of the sealing rim 20 would not be readily recognized as a "projection" nor would the portions of the ply 120 extending in the inboard and outboard directions of the sealing rim taken to be a protruding member in the sense as would be interpreted by the reader of ordinary skill.

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Further, by way of example, claim 4 calls for the thickness of the projecting portion to be in a range of 0.1 to 2.0 mm. The Office Action on pages 8 and 9 fails to directly address this issue and instead bases the rejection on an assumed thickness of the inner layer 120 of Kinigakis. Inasmuch as the dimensions of the layers 120 and 220 determine the structural strength of the container it would be assumed by the reader that this would have to be predominantly taken into consideration and that the thickness of the layers would be secondary and have less to do with the heat sealing function between the container and the cover member.

Accordingly, there is nothing in Kinigakis that would lead the reader of ordinary skill to the conclusion that there is, at the very least, a projection disposed on an upper surface of a crystallized portion of the opening rim part (claim 1) nor a heat sealing resin piece protruding toward an interior of the container (claim 8). Therefore, the rejection under § 103 is deemed untenable and should be withdrawn.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 11-0219 and please credit any excess fees to such deposit account.

Respectfully submitted,

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